

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ALICE M. WRIGHT,)	
)	
Plaintiff,)	
)	
v.)	Case No. 08-2282-CM
)	
THE TJX COMPANIES, INC.,)	
)	
Defendant.)	

ORDER

This case comes before the undersigned U.S. Magistrate Judge, James P. O'Hara, on the issue of John B. Gage, II's representation of the plaintiff, Alice M. Wright.

On January 27, 2009, Mr. Gage requested that the Kansas Supreme Court place him on disability inactive status and stay the pending state disciplinary proceedings against him. Effective February 9, 2009, the Kansas Supreme Court placed Mr. Gage on disability inactive status and stayed the disciplinary proceedings against him while he is on disability inactive status. The Kansas Supreme Court also ordered that Mr. Gage shall not engage in the practice of law until it ordered he was restored to active status.

Subsequently, on March 3, 2009, pursuant to D. Kan. Rule 83.6.9(b), and based on the above-described Kansas Supreme Court order, the Disciplinary Panel of the United States District Court for the District of Kansas found Mr. Gage incapacitated by reason of mental or physical infirmity or illness and suspended him from the practice of law until further order. Mr. Gage has been informed he can apply to the Disciplinary Panel for reinstatement pursuant to D. Kan. Rule 83.6.9(d). But because Mr. Gage is now suspended from practice

in both state and federal court, the court *sua sponte* hereby withdraws him as plaintiff's attorney of record in this case.

The record reflects plaintiff filed her complaint against the defendant, The TJX Companies, Inc., on June 20, 2008 (doc. 1). On August 12, 2008, plaintiff filed a return of service of summons and complaint indicating defendant was served by certified mail (doc. 3). Plaintiff attached the certified mail return receipt showing delivery on July 8, 2008. On November 14, 2008, because defendant had not answered or responded to plaintiff's complaint, the court issued a notice and order for plaintiff to show cause in writing by November 26, 2008 why this case should not be dismissed for lack of prosecution pursuant to Fed. R. Civ. P. 41(b) (doc. 4).

On November 26, 2008, plaintiff filed an application for clerk's entry of default (doc. 5). One day later, plaintiff filed her response to the court's order to show cause combined with a motion for default judgment (doc. 6); plaintiff gave a non-itemized amount of damages sustained, indicating her counsel had technology problems preventing him from submitting an itemized list on that date. On December 1, 2008, the clerk entered default as to defendant (doc. 7) and the court ordered plaintiff to submit a correct itemization of damages and any other necessary documents in support of her motion for default judgment by December 3, 2008 (doc. 8). Plaintiff, however, has not filed an itemization of damages or any other documents supporting her motion for default judgment.

There are no pending deadlines in this case. Plaintiff still needs to submit proof of her damages to support her motion for default judgment. The court sets this case for a status

conference on **March 31, 2009, at 9:00 a.m.** in U.S. Courthouse, Courtroom 236, 500 State Avenue, Kansas City, Kansas. Plaintiff shall appear in person at the conference.

In consideration of the foregoing,

IT IS HEREBY ORDERED:

1. Mr. Gage is withdrawn as counsel for plaintiff.
2. This case is set for a status conference on **March 31, 2009, at 9:00 a.m.** in U.S. Courthouse, Courtroom 236, 500 State Avenue, Kansas City, Kansas. As stated above, plaintiff shall appear in person at the conference. The court anticipates setting a deadline for plaintiff to retain substitute counsel and enter an appearance, or, failing that, to show cause why her case should not be dismissed, with prejudice, for lack of prosecution.
3. Copies of this order shall be served electronically on Ernest C. Ballweg,¹ and by certified mail (return receipt requested) on plaintiff at her last known address.²

Dated this 17th day of March, 2009, at Kansas City, Kansas.

s/ James P. O'Hara
James P. O'Hara
U.S. Magistrate Judge

¹Pursuant to Kan. Sup. Ct. R. 221(a), and by order authorized by the Administrative Judge of the District Court of Johnson County, Kansas, it is the undersigned's belief that Mr. Ballweg has been or soon will be appointed to inventory Mr. Gage's case files.

²823 Walnut Street, #904, Kansas City, Missouri, 64106